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September 17, 2009

The Honorable Nick J. Rahall II
Chairman, House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Doc Hastings
Ranking Member, House Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Re: Legislative Hearing on H.R. 3534 – The Consolidated Land, Energy, and Aquatic Resources Act of 2009

Dear Chairman Rahall and Ranking Member Hastings:

The Northwest Mining Association (NWMA) appreciates the opportunity to provide the following statement to the committee.

Our comments on the legislation will be limited to Subtitle B – Uranium Leasing, contained in Section 511 of H.R. 3534.

Approximately 20 percent of the electricity generated in the United States is produced from nuclear power, and uranium is the fuel that creates this energy. Nuclear power is one of the cleanest sources of consistent and reliable energy available. The nuclear energy process emits only one greenhouse gas – water vapor. It also is important to recognize that the vast majority of the uranium used to fuel our domestic nuclear electric plants is imported from Canada, Russia, Kazakhstan, and other countries. We import more than 95% of the uranium we need in spite of the presence of significant uranium resources in several of the western states, much of it located on public lands.

Section 511 of H.R. 3534 is particularly troubling to the domestic uranium industry because it would permanently remove uranium from location under the Mining Law after two years following enactment of the legislation and make it leasable. We will outline below why this scenario is unworkable from an economic and operational perspective, will severely damage our national and economic security, and subject the federal government to substantial takings litigation.

Northwest Mining Association – Who We Are

NWMA is a 114 year-old non-profit mining industry trade association with offices in Spokane, Washington, and 1,650 members residing in 40 states. Our members are actively involved in exploration, mining, and reclamation operations on BLM and USFS administered land in every western state, in addition to private, land grants and tribal lands. Our membership represents every facet of the mining industry including geology, exploration, mining, reclamation, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-base membership includes many small miners and exploration geologists as well junior and large mining companies. More than 90% of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with locating mining claims, exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations.

H.R. 3534 Violates the Takings Clause of the Constitution

Section 511 of H.R. 3534 requires all uranium production to have a lease even if a claimant holds an existing mine with a valid discovery of a valuable uranium mineral deposit. The bill would:

- create a bidding system similar to coal and oil & gas leases;
- impose a 12.5% royalty;
- require an exploration license; and
- if the claimant has a discovery, the claimant must apply to convert his mining claims to a lease within one year or the claims will be deemed null and void; and
- mining claims converted to leases pay a 6.25% royalty for the first ten years, then 12.5%.

H.R. 3534 fails to contain provisions to protect existing uranium mining claims that were located under the Mining Law. While the bill does require the secretary to issue a lease for uranium claims that can show a valid discovery as of the date of enactment, it extinguishes the claim (and the claimant's rights under the Mining Law) by converting it to a lease. The legislation fails to include some type of valid existing rights language to protect pre-existing property rights from being impaired by subsequently enacted policy changes. By failing to take into consideration property rights relating to properly maintained claims established prior to enactment of the bill, the legislation will likely generate claims for a compensable taking under the Takings Clause of the U.S. Constitution.

More than 100 years of legal precedent clearly indicates that a valid mining claim under the Mining Law of 1872 creates property rights for the claim holder. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963). The courts have recognized that valid unpatented mining claims are exclusive possessory interests in federal land for mining purposes, which entitle claim holders to extract and sell minerals without paying any royalties to the government. Union Oil Co. v. Smith, 249 U.S. 337, 348-349 (1919) ("If he locates, marks, and records his claim in accordance with [the Mining Law] and the pertinent local laws and regulations, he has . . . an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals, even to exhaustion, *without paying any royalty to the United States as owner*, and without ever applying for a patent or seeking to obtain title to the fee. . . .") (emphasis added). The Federal Circuit has reached the same conclusion, and stated further that "[e]ven though title to the fee estate remains in the United States, these unpatented mining claims are themselves

property protected by the Fifth Amendment against uncompensated takings." Kunkes v. United States, 78 F.3d 1549, 1551 (Fed. Cir. 1996).

Therefore, under existing law, the claimant of a valid unpatented mining claim has a protected property right in the *full value* of the minerals it extracts from its mining claim. A royalty interest, which is commonly defined as a right to a fractional share of the minerals produced from the land, also is a property interest. Shell Oil Co. v. Babbitt, 920 F. Supp. 559, 564-65 (D. Del. 1996). Thus, by requiring a claimant to pay the United States a royalty of 6.25% of the gross value of the uranium produced from an existing valid unpatented mining claim, H.R. 3534 plainly and directly affects a legislative/regulatory taking of that property interest from the mining claimant without compensation in violation of the Fifth Amendment. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992); Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978). Further, because the imposition of the royalty obligation is on mining claims that already are in existence on the date H.R. 3534 is enacted, the effect of the new law would be retroactive, depriving the mining claimants of their due process rights under the Fifth Amendment. Landgraf v. Usi Film Prods., 511 U.S. 244 (1944).

Uranium is Different from Coal, Oil and Natural Gas

To argue that uranium is an "energy mineral" and therefore should be treated just like minerals under the Minerals Leasing Act denies the simple facts of geology. Furthermore, the royalty provisions in H.R. 3534 are so high as to render essentially all of the domestic uranium resources uneconomic. The points below describe in detail why uranium differs markedly from coal, oil and natural gas and.

- Coal, oil and natural gas are fuel minerals that are typically located in vast sedimentary basins such as the Powder River Basin, San Juan Basin, Permian Basin, or the mid-continental US and Appalachians. Once an oil or natural gas well is successfully completed, it can produce with little or no additional effort other than insuring the well is in operating condition and functioning.

- Mines for uranium, gold, copper and other locatable minerals must be operated 24/7 and can't be walked away from like a producing oil or gas well can.

- Uranium deposits are small and difficult to locate, just like other hardrock deposits of gold, copper, molybdenum, cobalt or copper. Just because a uranium deposit may be discovered doesn't mean it is economical to mine because of ore grade, depth, metallurgical problems and additional geological or environmental constraints.

- Discovery, delineation and development of an in-situ or conventionally recoverable uranium ore body involves the same activities as those required for development of copper, cobalt, zinc, gold or copper ore bodies. Such activities typically require years of expensive fact-finding including ground, aerial and satellite reconnaissance; exploration drilling; environmental baseline data gathering; workforce hiring and training; mine and mill planning, design and construction; decommissioning and decontamination.

- Once a mineable deposit is identified, uranium ore requires additional extensive and expensive processing in the form of mining, crushing of the ore, separation and concentration of the U3O8. Further off-site steps include conversion to uranium hexafluoride, enrichment, conversion back to UO_2 and finally fuel fabrication. The in-situ process, while somewhat less expensive, still requires discovery and delineation of an economic ore body, mine planning and construction, recovery, separation and

concentration, and all of the additional downstream steps of conversion, enrichment and fuel fabrication.

- Uranium may also be found as an IOCG (Iron-oxide copper gold) deposit, similar to Australia's Olympic Dam operation where by-product uranium is produced from a copper gold deposit. Such a setting speaks for itself - there's simply no similarity to a leasable substance such as coal, oil or gas.

- Unconformity Style deposits such as those in Canada's Athabasca Basin often form along structures which provide conduits for the mineralization to deposit in basement rocks such as granites, gneisses, etc. or at the contact with the overlying sediments or up in the sediments such as gold deposits, etc. With such deposits there is no comparison to oil, natural gas or coal deposits.

- However, unlike the large disseminated gold or copper deposits, uranium deposits are typically very small deposits in a real extent relative to the surface footprint. Unlike coal, oil or natural gas deposits, uranium deposits are drill intensive, thus easy to miss, and very close drill spacing is required, often less than 50' spacing. NOTHING about these deposits is comparable to oil, natural gas or coal deposits.

- Volcanic hosted deposits are similar to the Canadian unconformity deposits. These deposits are often hosted in veins such as those that host underground gold deposits, and are possible in New Mexico and Nevada. The Streltsovka caldera in Russia is a prime example. In addition, the mineralization may be hosted in various volcanic units that exhibit alteration such as is found in gold deposits or massive sulfide deposits. Again, there is NO similarity to coal, oil and natural gas.

- Quartz-pebble conglomerate deposits such as those found in the Witswaterand in South Africa are described where uranium occurs along with the gold and is produced as a by-product of the gold operation.

- Roll Fronts are long, linear, discontinuous, narrow and sinuous ore bodies, and are very common in New Mexico, Texas, Wyoming and Nebraska. Such ore bodies are often drilled out on 25-50 foot centers and require a reductant such as a humate substance to cause the uranium to drop out of the fluids to form the ore deposit. Such deposits are unlike any known coal, oil or natural gas deposits.

- Alaskite hosted deposits are where uranium is disseminated in a granitic rock such as at Rossing in Namibia, Schwartzwalder in Colorado or Copper Mountain in Wyoming, forming bulk tonnages of low grades. For such deposits, mining techniques would be comparable to mining a large copper porphyry deposit.

- Uranium is a metal and is often mined with copper, gold and other metals. With the breccia pipe deposits, uranium commonly occurs with copper, nickel, cobalt, molybdenum, vanadium and a number of other locatable metals. To make uranium leasable, while the others mined at the same time are locatable, would produce regulatory and accounting confusion and would be unworkable from an operational perspective.

- In order to explore for and produce uranium, the same costly exploration, recovery and beneficiation techniques and extraction methods used for metals deposits are required. There is no similarity to coal, oil and gas or industrial minerals such as gypsum, gravel,

etc. Uranium is a metal deposit just like gold, iron, copper, lead, zinc, etc., and should be treated as such.

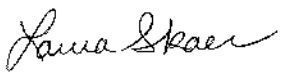
Conclusion

Uranium is currently locatable under the Mining Law for a reason – because it belongs there. Previous Congresses have recognized the differences between uranium and coal, oil and natural gas. We urge this Congress to do the same and reject the misguided effort to make uranium leasable.

Provisions in Section 511 of H.R. 3534 will make the mining of uranium in the United States uneconomic, leading to the loss of good-paying jobs and a dangerous total reliance on foreign sources of a critical component of our nation's energy portfolio. If enacted, H.R. 3534 also will subject the federal government to substantial takings litigation.

As a nation facing increasing demand for energy, we must increase the capacity for all available sources of energy, including clean nuclear power. Now is not the time to erect barriers to the development of the resources necessary to ensure our energy future. H.R. 3534 is bad policy for this country that will unnecessarily cripple the domestic uranium industry and put our nation's economic and national security at risk. Section 511 should be deleted entirely from the bill.

Respectfully submitted,



Laura Skaer
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